

UNITED STATES DISTRICT COURT

DISTRICT OF MAINE

**IN RE NEW MOTOR VEHICLES
CANADIAN EXPORT ANTITRUST
LITIGATION**

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MDL DOCKET No. 1532

**PROCEDURAL ORDER WITH REGARD TO
PROPOSED CONSOLIDATION ORDER**

After extensive consultations by telephone, fax and e-mail, Judge Richard Kramer of the State of California (San Francisco), and Judge D. Brock Hornby of the District of Maine, have agreed to enter in their respective courts the Consolidation Order proposed by lead and liaison counsel in the Multidistrict Proceeding, with certain alterations.

1. The document shall be formatted with a dual caption, reflecting both the California cases and the Maine multidistrict case.
2. The attached preamble and definitions shall replace the “whereas” clauses.
3. Signature lines shall be provided for both Judge Hornby and Judge Kramer.
4. An additional signature line shall be provided to reflect the manner in which another state court may join in the order.
5. The following changes in the language are required:

(a) In paragraph 1, limit the pretrial scheduling to discovery-related pretrial scheduling;

(b) In paragraph 3, add a sentence as follows: “If any Court in a Coordinated Action enters further restrictions, those further restrictions apply only to the action before that court, and shall not bind the parties in proceedings before the Multidistrict Court or in proceedings in other Coordinated Actions.”;

(c) In paragraph 4, delete the word “only” on the third line and in the second last line (i.e. there may be other restrictions);

(d) In paragraph 7, the reference should be to Exhibit A;

(e) In paragraph 8, the reference should be to paragraph 26;

(f) In paragraph 15, replace “its” with “counsel’s”; replace “except in accordance with” with “in violation of” (*i.e.*, there may be other restrictions). Also add to the end of the paragraph, “or applicable law in a coordinated proceeding” to reflect that some states have a right-to-know presumption that must be overcome in order to seal a public record.

(g) In paragraph 16, eliminate the first sentence to avoid a rush to notice in a particular state action. (If the deposition is important enough for universal application, it should be in the MDL case.);

(h) In paragraph 23, provide that any controversy over fair share of costs shall be determined in the Multidistrict court; and

(i) In paragraph 27, add at the end of the sentence: “as it affects proceedings before that particular court.”

Counsel shall prepare a new order accordingly.

The Clerk’s Office shall schedule a conference of counsel with me and Magistrate Judge Kravchuk (telephone or video participation for out-of-state counsel is acceptable) to establish a discovery schedule. Counsel shall confer in advance of the conference and shall submit their proposal to the Court in writing at least two (2) business days before the conference. Counsel shall on the same date propose an agenda for the conference for all other issues that need to be discussed with the Court.

So ORDERED.

DATED THIS 14TH DAY OF APRIL, 2004.

/s/D. BROCK HORNBY
D. BROCK HORNBY
UNITED STATES DISTRICT JUDGE

[CAPTION FOR BOTH DISTRICT OF MAINE AND STATE OF CALIFORNIA]

PREAMBLE

[previously, the “Whereas” section]

A Multidistrict Proceeding is pending in the District of Maine involving 26 cases transferred from 7 jurisdictions. Their subject matter is antitrust claims concerning alleged restrictions on the importing of Canadian motor vehicles.

Lead and liaison counsel have been appointed in the Multidistrict Proceeding. The Multidistrict Court has ruled on a variety of motions to dismiss, and the case is going forward.

Parallel proceedings are pending in state courts in Arizona, California (two batches of many cases), Florida, Minnesota, New Jersey (four cases),¹ New Mexico, New York (two cases), Tennessee, and Wisconsin (two cases), involving the same subject matter with substantial overlap of parties. They are at various stages of progress, and some state courts have stayed proceedings, at least temporarily, while waiting to see what the Multidistrict Proceeding will do.

It is obvious that there is great risk of duplication of effort and unnecessary expense, and consequently a need for coordination.

All parties in the Multidistrict Proceeding have proposed a consolidated discovery and pretrial order. After conferring, they have agreed on proposed language that has gone through several iterations. It is based largely on a joint coordination order that Commissioner Bruce Mitchell of California and Judge Hornby of the District of Maine entered in their respective music

¹ The New Jersey state proceeding has been dismissed and is on appeal.

CD antitrust lawsuits (another multidistrict litigation case) three years ago. Counsel from some of the state court proceedings disagree with the proposal. They prefer what was done in the Microsoft litigation. They have conferred with multidistrict counsel, but have been unable to reach agreement. They have therefore submitted their own separate proposal. At their request, the Multidistrict Court delayed entering a consolidated discovery and pretrial order pending ruling on the motions to dismiss. Those rulings have now been issued, and it is time to make a decision on the coordination proposals.

Although there are a number of differences between the competing coordination proposals, the three most important seem to be: (1) where will discovery disputes be heard (the multidistrict parties propose a federal magistrate judge in the Maine proceeding; the state proceeding parties propose a special master appointed in California); (2) will the multidistrict proceeding be the lead case; and (3) should the multidistrict proceeding protective order govern discovery in state court lawsuits, especially if it affects parties and issues that are not part of the multidistrict proceeding.

On the first question, Maine offers videoconferencing and teleconferencing for discovery disputes quickly before a magistrate judge; the Maine alternative is therefore less expensive than appointing a special master, and not materially less convenient than physical access to a master in California. On the second question, the largest concentration of resources is in the Multidistrict Proceeding and that court is likely to have the most time and resources to shepherd the proceedings along. On the third issue, there has been no showing that the multidistrict protective order is excessively onerous. If it is, it can be amended upon request. If the concern is that it is not strong enough, it can be strengthened, or an individual state can make it stronger for its own proceedings, albeit not for the federal or other state proceedings.

A federal multidistrict court cannot bind the state courts in parallel proceedings, and the state courts cannot bind the federal court. No court that signs this Order intends to violate that principle. But if the multidistrict court and a given state court simultaneously enter an order, they can collectively and effectively direct the parties and counsel before them to coordinate. Other state courts then can sign on, as and when they choose to. Some state courts may decide to go forward on their own, regardless of the progress of the Multidistrict Proceeding. Some state courts may choose to stay their actions pending the outcome of the Multidistrict Proceeding. But some may join the Coordination Order to achieve maximum coordination so as to serve the interests of judicial economy and reduction of attorney fees and costs for many of the cases. It is in that spirit that this Order is entered.

Accordingly, Judge Hornby of the District of Maine (the Multidistrict Court) and Judge Richard Kramer of the California Superior Court (San Francisco) (henceforth a Coordinated Action) having consulted by telephone, fax and e-mail concerning the terms of the proposed order, do hereby enter this Order for their respective cases and their respective jurisdictions.

DEFINITIONS

1. The Multidistrict Proceeding: MDL 1532, In re New Motor Vehicles Canadian Export Antitrust Litigation, District of Maine.
2. The Multidistrict Court: Judge D. Brock Hornby of the United States District Court for the District of Maine.
3. State Court Actions: any state court lawsuits involving the same subject matter as the Multidistrict Proceeding.
4. Coordinated Action: Automobile Antitrust Cases I and II, J.C.C.P. Nos. 4298, 4303 in

California Superior Court, San Francisco County, before Judge Richard A. Kramer; and any other state court lawsuit that subsequently enters this Order.

OPERATIVE TERMS

[This would be the part of the proposed order starting with the “now, therefore, it is ordered” on page 2.]

It Is So ORDERED.

[SIGNATURE LINES FOR HORNBY AND KRAMER]

**U.S. DISTRICT COURT
DISTRICT OF MAINE (PORTLAND)
CIVIL DOCKET FOR CASE #: 2:03-MD-1532-DBH**

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